IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4866 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ORIENTAL FIRE AND GENERAL INSURANCE CO.LTD. - Appellant(s)
Versus
DESAI AGARBEN SAMABHAI & 3 - Defendant(s)

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Appearance :
MR KK NAIR for Appellant(s) : 1,
MR VIKRAM J THAKOR for Defendant(s) : 1 - 2.
None for Defendant(s) : 3 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 04/09/2006

ORAL JUDGMENT

1. The insurance Company has preferred this appeal to challenge judgment and award passed by the Motor

Accident Claims Tribunal (Main) Banaskantha at Palanpur dated 17/09/1994 in Motor Accident Claim Petition No.228 of 1987. By the said award, the Tribunal has granted compensation in favour of respondents No.1 and 2, who are original claimants, to the tune of Rs.70,000/- together with interest at the rate of 12% and proportionate cost.

2. Respondents No.1 and 2 are the heirs of deceased, who was on the relevant date travelling in a Jeep owned by respondent No.4. It was being driven by respondent No.3. It is the say of original claimants that on account of rash and negligent driving of respondent No.3, the deceased fell from the vehicle and sustained serious injuries and ultimately expired. The present proceedings were, therefore, filed to obtain compensation for the death of the deceased. Claim of Rs.1 lac has been made in the claim petition under different heads. The present appellant-insurance Company contested the claim of respondents No.1 and 2 on several grounds. It was the defence of the appellant that the driver had committed breach of the condition of the policy,

and therefore, insurance Company was not liable to satisfy the same. It was also contended that the deceased himself was responsible for sustaining serious injuries to which, he later on succumbed, since he was hanging outside the vehicle by clutching the handle.

3. The Tribunal on the basis of the evidence led before it accepted the plea of the appellant-insurance Company holding that the deceased himself was partly responsible for unfortunate incident wherein he lost his life. In other words, the Tribunal came to a conclusion that there was contributory negligence on the part of the deceased to the extent of 50%. However, the insurance Company has now challenged in this appeal, its liability to pay any amount on the ground that there was breach of the term of the policy and the insurance Company is not liable for any compensation.

4. So far the discussion with regard to the compensation awardable to respondents No.1 and 2 is concerned, it is contained in Para-11 of the judgment

of the Tribunal on the basis of the evidence produced before it, oral as well as documentary. The Tribunal has assessed the income of the deceased at Rs.1,000/- per month and on the basis of the same, has determined the dependency benefit at Rs.8,000/- per year. By applying 15 years' multiplier, it has determined the figure at Rs.1,20,000/- for loss of income and it has also awarded Rs.20,000/- towards loss of estate. In all according to the Tribunal, the amount that could be awarded was Rs.1,40,000/-. However, considering 50% contributory negligence of the deceased, it is slashed down to half i.e. Rs.70,000/- and the same has been awarded. Since this is an appeal of the insurance Company, there is no reason for me to re-appreciate the evidence and determine the compensation, since the defence of the insurance Company was very limited and it cannot challenge the amount of compensation awarded to the claimants. So far the submissions advanced by Mr. Nair, ld. Advocate for insurance Company with regard to breach of condition is concerned, irrespective of the fact that whether any term was breached by the driver, so far as the deceased and the present

respondents No.1 and 2 are concerned, they will not be adversely affected by it. At best, the insurance Company can recover that amount from the insured, if it is thought fit by it. So far respondents No.1 and 2 are concerned, they are the original claimants i.e. heirs of the deceased and they cannot be deprived of the award of compensation made to them by the Tribunal on this ground.

5. In short, this appeal has no merits and it is required to be dismissed. Hence, it is ordered to be dismissed with no order as to costs.

(AKSHAY H. MEHTA,J.)

mrpandya*